

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

CRL.A.No. 670 of 2000()

CC.39/1999 of ENQUIRY COMMISSIONER & SPL. JUDGE, TRIVANDRUM
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APPELLANT: ACCUSED

**JOHN SUGATHAN PAUL, U.D.CLERK,
E.S.I. HOSPITAL, PERURKADA,
THIRUVANANTHAPURAM**

BY ADV. SRI.M.T.SURESHKUMAR

RESPONDENT: COMPLAINANT

**STATE OF KERALA, REP.BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.P.SUKUMARAN

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

CRL.A. NO.670/2000

ORDER CRL.MP. NO.4869/02000 IN CRL.RP.670/2000

DISMISSED

24.07.2007

SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.S . TO JUDGE

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K.R. UDAYABHANU, J.

CRL.A.NO.670 OF 2000

DATED THIS THE 24^h July 2007

JUDGMENT

The appellant is the 2nd accused in C.C.No. 39/1999 in the court of the Enquiry Commissioner and Special Judge, Thiruvananthapuram and who stands convicted for the offences under sections 409, 477-A and 120-B read with section 109 I.P.C. and under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for a period of six months for the offence under Section 120-B I.P.C., rigorous imprisonment for a period of three years and a fine of Rs.10,000/- for the offence under Section 477-A I.P.C., rigorous imprisonment for a period of three years and fine of Rs.10,000/- for the offence under Section 409 read with Section 109 I.P.C., and rigorous imprisonment for a period of three years and a fine of Rs.10,000/- for the offence under Section 13(1)(c) read with section 13(2) of the P.C.Act, 1988 and rigorous imprisonment for a period of one year and

fine of Rs.5,000/- for the offence under Section 13(1)(d) read with Section 13(2) of the P.C.Act,1988. If the fine amounts are not paid or realised the accused shall undergo rigorous imprisonment for a period of six months each for Rs.10,000/- each as mentioned above and rigorous imprisonment for a period of three months each in default of payment of fine of Rs.5000/-. The substantive sentences shall run concurrently.

2. The crime was registered against the accused/appellant who was the Cashier of E.S.I.Hospital, Peroorkada along with A1 who was the Lay Secretary and Treasurer of the above hospital with respect to the alleged misappropriation of amounts during the period 19-8-1995 to 8-7-1996. A1 died even before the registration of the crime. It was subsequent to the internal audit on 8-7-1996 in respect of the transaction of the above period that the matter was enquired into by the Vigilance Department.

3. The evidence adduced in the matter consisted of the testimony of PWs. 1 to 15 and Exts.P1 to P49.

4. Accused/appellant stands suspended since 7-7-1997. A

sum of Rs.1,81,836.56 has been allegedly misappropriated by the deceased Lay Secretary in pursuance of the conspiracy in between A2/ the appellant - Cashier and A1, the deceased Lay Secretary. It is also alleged that in pursuance of the conspiracy, A2 dishonestly and wilfully neglected to maintain the cash book, Advance register etc. Further the accused/appellant prepared contingent bills dishonestly enabling A1, the Lay Secretary to withdraw advances without obtaining sanction from the head of Office, i.e. Medical Superintendent (PW2). Further the accused failed to maintain the vouchers showing the expenses for drawal of advances and also failed to account the amounts withdrawn in the concerned account books. The accused/appellant has also abetted in the misappropriation of the amounts. The appellant also dishonestly misappropriated a sum of Rs.1200/- drawn from the salary of CW14 (PW9) in order to remit at the K.S.F.E. but did not remit the same and converted the money for his own use.

5. Of the prosecution witnesses, PW1 is the present Lay

Secretary of the E.S.I. Hospital who produced the relevant files, PW2 is the Medical Superintendent, who is the head of office of the Hospital; PW3 is the Head Clerk; PW4, the Junior Superintendent; PWs.5,6 and 7 are the Sub Treasury officers of Vellayambalam Sub Treasury, who officiated therein during the relevant period. PW8 is the LD.C. at the Water Works Department who is to issue receipts for receipt of water charges. PW9 is the Attender of the E.S.I. hospital from whose salary the amounts were deducted by the appellant for remitting at the K.S.F.E. PW10 is the Branch Manager of the concerned Branch of K.S.F.E. PW11 is the Finance Officer, E.S.I. Directorate who conducted internal audit of E.S.I. Hospital, Peroorkada. PW12 is the Senior Manager of the K.S.F.E.; PW13 is the Director of the E.S.I. Corporation who issued the sanction order; and PWs.14 and 16 are the investigating officers.

6. The defence of the accused is that he did everything at the instruction of A1, the deceased Lay Secretary and that he was helpless as he being the subordinate was bound to obey the

superior orders of the Lay Secretary.

7. The trial court has mainly relied on the evidence of PW2, the Medical Superintendent of the Hospital and that of PW11, the Finance officer who conducted internal audit done after the matter was reported to the Director of E.S.I., to find that there has been misappropriation of amounts to the tune of Rs.1,81,836.56 by non-accounting and also falsification of accounts and also specific misappropriation of R.1200/- by A2, the appellant, on 8-7-996 itself . When the internal audit commenced, PW11, the Finance Officer detected a shortage of cash in hand amounting to Rs. 1,34,257.66. The amount in the cash chest was only Rs.37,580.50. The above is evident from Ext.P1 file which contained the signature of A1 as well as A2 who admitted the shortage. As per Ext.P2 circular of the Director of Insurance Medical Services dated 31-1-1991, the Lay Secretary and Treasurer of the Hospitals are empowered to present contingent bills and sign the treasury bill books. He is also made the custodian of cash and empowered to authenticate the cash

book, contingent register, P.A. register and other cash transactions. Ext.P11 proceedings showed that A2, the appellant, was placed in-charge of AC-I Section that dealt with cash affairs. Ext.P12 office order issued by the Medical Superintendent dated 21-7-1995 specifies that A2/appellant is in charge of cash book and subsidiary registers, preparation of contingent bills, payment of current charges, telephone charges etc. and recoveries effected in acquittance roll and maintenance of the registers.

8. The procedure for encashing of contingent bills mentioned by PW2 is that the Cashier/A2 has to prepare a draft which should be routed through the Junior Superintendent and Lay Secretary and approved by the Medical Superintendent and then the original has to be prepared and the Lay Secretary is to affix his signature and present the same before the Treasury. The amount drawn should be accounted in the account books concerned. Ext.P14 to P24 are such bills etc. prepared following the above procedure. But with respect to Ext.P4 series of

contingent bills, the above procedure has been flouted. It is seen that the above bills are prepared in the handwriting of the appellant. The successive Sub Treasury Officers, i.e., PWs.5, 6 and 7 have testified as to the withdrawal of the contingent bills by the then Lay Secretary and Treasurer of the E.S.I. hospital which is evidenced by Exts.P7 to P9 Treasury Bill Books and that the bills are prepared by the appellant. Further A2/cashier has noted in the above bills that the same was with respect to "inevitable expenditure". The above Treasury officers have deposed that in the absence of such a noting as inevitable expenditure, the bills would have been audited and objected to by the Treasury Officials as the previously drawn bills were not seen expended. So also Exts.P5 and P6 cash books for the period upto 22-7-1995 and 8-7-1996 respectively the same did not contain the entries tallying with the Treasury Bill Books. It was the duty of the appellant being the Cashier to close the transactions on the same date itself after obtaining initials of the Lay Secretary. It was also found that only accounts upto 2-

7-1996 was written up in the cash book when it was examined on 8-7-1996 as deposed to by PW11, the Finance Officer.

9. Further four bills for a sum of Rs.6128/-each drawn and mentioned as expended for remittal of water charges in the cash book and the remittals were not actually made. The alleged remittals noted are on 17-4-1995, 2-6-1995, 12-7-1995 and 19-8-1995. The above false entries were made by the appellant. The receipts for remittal were not available.

10. PW4, the Junior Superintendent has testified that he issued office notes to A1, the Lay Secretary with respect to the irregularities in the cash book etc. but the same were ignored and the account books although directed to be placed before him for verification, A2/appellant at the instructions of A1 declined to do so. It was without routing through him and obtaining the previous concurrence of the Medical Superintendent that the contingent bills prepared by the appellant were encashed. PW4 has asserted that without the connivance of the appellant, A1, the Lay Secretary would not be able to perpetuate the

misappropriations. It is further stated that on receipt of notice of receipt of disconnection of electricity from the K.S.E.B., he issued an official note to the appellant and on verification it was found that the contingent bills or remittal of electricity charges were encashed for five months and there was no corresponding entries in the cash book. It is deposed by him that the appellant did not write the accounts upto date deliberately so as to enable misappropriation. According to him, the appellant when enquired to him that the vouchers have not been handed over to him by A1, the Lay Secretary, and that it was thus the matter was informed to the E.S.I. Director and the internal audit was ordered. It was also proved through PW4, the Junior Superintendent, that Exts.P6 to P29 contingent registers are in the handwriting of the accused. PW11 has also testified that the appellant being the custodian of cash books, contingent registers and the person preparing the bills and making entries in the cash books, it would not be possible to commit the misappropriation by A1, the Lay Secretary, without the knowledge and help of the

appellant. PW11, the Finance Officer who has prepared the internal audit report, i.e. Ext.P3 has stated that the actual book balance should be a sum of Rs.2,19,417.06 but the physical balance was Rs.37,580.00 and the shortage was Rs.1,81,836.56. It was also found that two contingent bills for Rs.10,000/- each encashed vide contingent bill No.39/95-96 and contingent bill No. 92/95-96 was not accounted. So also Rs.25,494/- shown as expended was in fact not expended.

11. It is seen vide Ext.P3 report and the evidence of PW11 that 11 contingent bills each for a sum of Rs.6128/- and altogether for a sum of Rs.67,408/- have been encashed purportedly for remittance towards water charges. But the amounts were not remitted. Evidently A2, the cashier ought not to have prepared the further contingent bills after receiving receipt of remittance of the amount encashed by the first bill dated 19-8-1995, even if it is conceded that it is A1, the Lay Secretary who used to arrange the remittances. The total arrears of water charges as on 19-8-1996 including fine was Rs.73,660/-

which was remitted subsequent to the detection.

12. It was also found that vide Ext.P3 report and the evidence of PW11 that 15 contingent bills from 19-10-1995 to 25-6-1996 for a sum of Rs.10,000/-each towards the Head "Materials and Supplies" were encashed, but no vouchers were obtained to establish that the amounts were expended. The total amount so encashed amounts to Rs.1,33,389.06 as per Ext.P3 report. Passing the buck to A1 that he did not return the vouchers cannot be countenanced. It was also noted that in Ext.P33 Acquittance Roll and Ext.P34 Family Planning Acquittance Roll, the cash balance of a sum of Rs.7405/-has not been shown in the cash book.

13. It was also proved that two instalments of Rs.600/- each towards the amount due to K.S.F.E. Peroorkada Branch from PW9, the Attender Grade-II of E.S.I. Hospital, Peroorkada being the liability as he stood surety for the loan availed by another person was found not to have been remitted, although the amount was deducted from his salary. The evidence of PW9,

the Attender, the entries in Ext.P30 Acquittance Roll and the evidence of PW10, the Branch Manager and PW12, the subsequent Branch Manager of K.S.F.E. Do establish the same. A2, the cashier was directly responsible for the above misappropriation. I find that the evidence adduced in the matter do establish beyond reasonable doubt that the accused is guilty of the offences alleged as held by the Special Judge. The conviction is confirmed.

14. Counsel for the appellant has pleaded for leniency pointing out that more than 10 years have elapsed since the commencement of the proceedings and that so far the accused has been facing the proceedings and that he has underwent untold miseries and that imprisonment may be avoided. Considering the fact that more than a decade is over since the commencement of the proceedings and that the main accused who is A1 is no more, I find that the sentence is liable to be modified. Hence the sentence is modified to undergo simple imprisonment for three months and to pay a fine of Rs.50,000/-

(Rupees fifty thousand) for the offence under Section 409 I.P.C. and in default to undergo simple imprisonment for six months and to undergo simple imprisonment for three months and to pay a fine of Rs.50,000/-(Rupees fifty thousand) for the offence under Section 477-A I.P.C. and in default to undergo simple imprisonment for six months. He is also sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.50,000/-(Rupees fifty thousand) for the offence under Section 13(1)(c) read with Section 13(2) of the P.C. Act. The substantive sentences of imprisonment shall run concurrently. No separate sentence is awarded for the rest of the offences. The Crl. appeal is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.A. 670 of 2000
JUDGMENT

24-7-2007